

### III. REMARKS

Applicants have considered the current Office Action mailed on June 15, 2006. Claims 1 – 20 are pending in this application. By this amendment, claims 1, 4, 7, 11, 14 and 18 have been amended. Applicants do not acquiesce in the correctness of the rejections and reserves the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

#### A. OBJECTION OF CLAIM 4

In the Office Action, claim 4 was objected to for not complying with formal requirements. Applicants have amended claim 4 to replace "where" with "in the case that" to address the Office's concern without introducing a chronological limitation. Applicants have amended claims 11 and 18 in a similar manner. Consequently, Applicants respectfully request the Office to withdraw this objection.

#### B. REJECTION OF CLAIM 14 UNDER 35 U.S.C. §101

The Office has rejected claim 14 under 35 USC §101 for allegedly being directed to non-statutory subject matter. Applicants have amended claim 14 to recite, "A computer program product comprising a computer readable storage medium having computer ...." in accordance with the Office's suggestion in the current Office Action. Accordingly, Applicants request that the rejection be withdrawn.

**C. REJECTION OF CLAIMS 1-20 UNDER 35 U.S.C. §103(a)**

The Office also rejected claims 1-20 under 35 U.S.C. 103(a) as allegedly being unpatentable over Pazos (US 2005/0068896 A1), hereinafter "Pazos", in view of Elzur (US 2003/0172342 A1), hereafter "Elzur." Applicants respectfully submit that the Office should withdraw the §103(a) rejections and assert that claims 1-20 are patentable over Pazos and Elzur.

Independent claim 1 as currently amended, recites, *inter alia*, "...a first duplicate TCP acknowledgement (Ack) covering a received TCP segment that is determined to be valid by a local TCP and was dropped by the local TCP based on an upper layer protocol (ULP) decision...".

With regards to the 35 U.S.C. §103(a) rejection over Pazos in view of Elzur, Applicants assert that the references cited by the Office do not teach each and every feature of the claimed invention. For example, with respect to claim 1, as stated on page 4 of the current Office Action, Pazos does not explicitly teach, *inter alia*, "... a TCP segment that is determined to be valid by TCP and was dropped by TCP based on an upper layer protocol (ULP) decision...". Previously presented claim 1. On the contrary, Pazos discloses a method that issues a duplicate TCP Ack for fast retransmission without involving an upper layer protocol (ULP). The Office alleges that Elzur discloses a system and method for identifying upper layer protocol (ULP) message boundaries and allegedly provides for silently dropping the TCP segment. ¶ [0050]. The Office opined that it would have been obvious to an ordinary person skilled in the art to combine this aspect of Elzur with the teachings of Pazos to arrive at the claimed invention set out in claim 1. Applicants respectfully submit that this rejection should be withdrawn because the control information in Elzur are implemented through remote

TCPs, for example, by "... a receiver 30 ... silently ... [dropping] a TCP segment and ... [allowing] the TCP layer mechanisms to re-transmit it". ¶ [0050]. In contrast to Elzur, the claimed invention has ULP decisions implemented through a local TCP. Pazos and Elzur fails to teach or suggest "... a received TCP segment that is determined to be valid by a local TCP and was dropped by the local TCP based on an upper layer protocol (ULP) decision...". Currently amended claim 1. Therefore, a person of ordinary skill in the art following the Pazos-Elzur teachings would not have considered incorporating the claimed process at a local TCP level. Since the claimed invention is not disclosed or suggested in the teachings of Pazos-Elzur and cannot be achieved by combining the teachings, the Office has not establish a *prima facie* case of obviousness under §103(a). Therefore, Applicants respectfully assert that the teachings of Pazos and Elzur do not render the claimed invention obvious when read individually or together. In view of the foregoing, Applicants respectfully request that the Office withdraw the current rejections and allow claim 1.

With respect to dependent claims 2 – 6, Applicants respectfully submit that they are patentable over Pazos and Elzur in view of their dependency from claim 1, currently amended. In addition to the above arguments, Applicants submit that each of the dependent claims is patentable for one or more additional unique features. For brevity, Applicants have opted not to address the appropriateness of the Office's rejections of each and every dependent claim. However, Applicants reserve the right to present arguments for each dependent claim feature in a later response should the need arise.

Applicants submit that system claims 7 – 13 and computer product program claims 14 – 20 correspond to patentable subject matter in claims 1 – 6. In accordance with the preceding paragraphs, these claims are also patentable over Pazos and Elzur.

**IV. CONCLUSION**

In light of the above, Applicant respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,



Spencer K. Warnick,  
Reg. No. 40398

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Hoffman, Warnick & D'Alessandro LLC  
75 State Street  
Albany, NY 12207  
Telephone: (518) 449-0044  
Fax: (518) 449-0047

SKW/TC